



# Family Business News

A newsletter for the family business sector

## Introduction

Welcome to the twelfth edition of Family Business News.

Family Business News addresses issues relevant to the family business sector including communication, change management, employment and issues surrounding the transfer of the business to the next generation.

This edition focuses on planning for long term success, the importance of a Will, the success of a family business and addressing super funds and borrowing.

## Inside this issue

- *Planning for long term success*
- *Diary dates*
- *The importance of a comprehensive Will*
- *Southern Engineering Services Group takes home award*
- *Super Funds & borrowing*
- *We want to hear from you*

## Planning for long term success

As businesses start the New Year we invite them to reflect on their purpose.

Why are you in business? Taking a step back can bring focus and clarity when setting the goals and vision for the future. Now more than ever is a time to go back to the basics and strengthen the foundations of the business – processes and structure. Consolidate and refine your systems to enhance efficiency and productivity. Keep the communication flowing and talk to your staff, suppliers and customers. Building loyalty with your key stakeholders creates a sustainable competitive advantage. It may even see you paid ahead of other creditors.

Tap into family resources (the previous generation) in lean times as there is a wealth of knowledge and experience in navigating challenging times that current generations may not have encountered. The long term thinking of family businesses is a recipe for success and often produces entrepreneurship and innovation to reinvigorate the business.

For assistance in building long term sustainability in your family business please contact a member of the Family Business Consulting team or email [marina.skinner@bdo.com.au](mailto:marina.skinner@bdo.com.au).

## Diary dates

**FBA workshop Thrive not survive** – 4th Feb 2009

**FBA Chairman's lunch** – 6th Feb 2009

**BDO International Business Seminar** – 12th Feb 2009

**FBA Next Generation event** – 22nd Feb 2009

**FBA Forum** – 5th March 2009

**FBA entries close for State awards** – 1st April 2009

**FBA Summit and Awards** – 1st May 2009

Please contact your State representative for more information on 1300 138 991

# The importance of a comprehensive Will

Jane Blake, McMahon Clarke Legal

Ensuring you have a valid Will is the first step in proper estate planning. If you die without a valid Will, then you are said to have died intestate and your assets will be distributed according to a statutory formula with no regard to your wishes. This may result in your assets being paid to an unintended beneficiary. For example, if you are separated from your partner but not divorced, then he or she is entitled to a share of your estate if you die intestate.

There are significant benefits to investing time in preparing a comprehensive Will. Some of these are discussed below.

## Testamentary trusts

Testamentary trusts are a commonly used and are a valuable estate planning tool. A testamentary trust is a trust established via your Will which is funded by the assets of your estate or a payment to your estate (e.g. superannuation proceeds) as a result of your death. Some of the benefits of testamentary trusts are set out below:

### 1. Asset protection in relationship breakdowns

Testamentary trusts can be a useful tool for parents concerned about their children's choice of partner. If you die leaving all or part of your estate to a child who is in the midst of a relationship breakdown, then a percentage of the assets they inherit from you may be awarded to their ex-partner in a Family Court property settlement. If you instead allow your child to inherit via a testamentary trust, then it is possible to provide some protection to the assets from a relationship breakdown.

### 2. Asset protection for "at-risk" beneficiaries

By giving a beneficiary an option to inherit assets via a testamentary trust, the beneficiary can choose not to inherit the assets personally. This is a very attractive feature for a beneficiary in any of the following situations:

- (a) 'At risk' professionals (e.g., business owners, company directors, doctors, lawyers, accountants, engineers, medical professionals) who prefer not to own assets personally. Many professionals spend time and energy during their career establishing structures that protect their assets (such as their home and investments) only to find that one day they inherit substantial assets in their personal name. They may then be forced to pay stamp duty and incur potential capital gains tax liabilities on transferring assets to other vehicles that offer better asset protection.

- (b) Beneficiaries facing bankruptcy. For example, a failed business venture might mean a potential beneficiary is facing the prospect of bankruptcy. If assets are inherited personally, then they may be lost to the trustee in bankruptcy. If they are held in a testamentary trust, then they can be protected.

### 3. Tax effective

Perhaps the most significant benefit of testamentary trusts is the potential tax advantages they offer. For example:

- (a) Income streaming

A beneficiary who inherits assets in their personal name will pay tax on any income generated on those assets at their personal tax rate. If however a beneficiary inherits via a testamentary trust, then any income earned on the assets in the trust can be distributed among a broad range of discretionary beneficiaries (e.g. a non-working spouse or minor children), thus lowering the overall tax rate.

- (b) Minors are taxed as adults

Income distributed to a minor from a testamentary trust is taxed at adult marginal rates. For example, this means each child can receive up to \$6,000 per annum tax-free. This is different to income distributed to a minor from a trust established during your life (e.g. family trust) where income distributed to minors is taxed at 46.5%.

A simple example is as follows:

*Michelle has three children (ages, 4, 6 and 9) and was left \$200,000 in a testamentary trust under her father's Will. The beneficiaries of the trust are Michelle and her children. The trust funds are invested and earn income of \$15,000 per annum. If Michelle is on the highest marginal tax rate and the trust income was distributed to her, then almost half would be paid in tax. However, because Michelle's father thoughtfully included a testamentary trust in his Will, Michelle is able to distribute \$5,000 to each of her children. The children pay no tax because the amount is under the tax-free threshold. These distributions are used to fund their education costs each year.*

For more information or for a free Will "health check" contact Jane Blake at McMahon Clarke Legal on (07) 3239 2942.

# Southern Engineering Services Group takes home award

Robert Powell, Director – PECS, BDO Kendalls (NSW)

## SES Group wins Second Generation category at the NSW & ACT Family Business of the Year Awards

The Family Business of the Year Awards celebrates the achievements of family businesses in Australia, and the contribution they make to our society. Each State Chapter awards four generational category winners and the winners are judged on the financial performance of their business as well as their active involvement within the community.

On 15 May, the winners of the 2008 NSW & ACT Family Business of the Year Awards were announced in Sydney and BDO Kendalls' client, Southern Engineering Services Group was announced the winner of the Second Generation Award.

The SES Group provides engineering and key product support services to a mix of customers in steel, coal mining and metals mining, fertilisers, heavy materials handling, chemical, construction, general engineering, water treatment process industries, medical, manufacturing, food processing and automated packaging and equipment.

Based in Wollongong NSW, the SES Group has grown over the past 33 years from 30 staff to more than 250 staff in operating divisions around the country as well as New Zealand. Paul Wenham, owner and Director of SES Group acquired the business in 1975, and places a strong emphasis on training and staff development in order to provide the best level of customer service, as well as a focus on providing support to the communities in which the business operates.

Paul spoke with Family Business News about receiving the Award, some of the challenges they have faced as a family business, and the importance of succession planning.

*You have had an interest in your business Southern Engineering Services Group since 1975, and became a sole proprietor in 1986. How has the business grown over the past 33 years?*

From relatively small beginnings on one site the company now has 23 operations across all mainland states and in New Zealand with approximately 260 people. We have, however, maintained our focus on the industries we serve to offer the highest level of service to our customers with excellence in engineering and customer care. Our advisers, BDO Kendalls have supported our ambitions throughout the entire period.

*What are some of the challenges you have faced as a family business and how have you overcome these?*

All family businesses face growing pains in financing, debtor carry, stock carry and management growth. We are very fortunate to have excellent management in our divisions, and our training programs focus on developing our personnel in order to give them a secure future, and hopefully satisfy their personal and professional ambitions. To this end our staff turnover is very low.

*As a second generation family business, how do you separate family issues and business issues when they arise? For example, have you set rules in place to deal with conflict?*

The company is managed as if it was a public company and therefore family issues do not arise. All management must adhere to corporate governance convention and are expected to perform to the highest principles of business conduct.

*Your son Andrew is also a Director of Southern Engineering Services Group. How and at what stage did Andrew become involved with the business?*

Andrew became directly involved in the main SES Group business in 1991. This followed a period of 12 years working within another business unit that specialised in areas outside the direct supply chain of the SES Group. However, this experience gained in other operational entities is important in developing the skills and knowledge required to expand horizons.

*Do you have other family members who are also interested in joining the business? If so, how have you planned for this integration?*

It is hoped that younger family members may join the company at some time, and take up a position according to their particular skills and interests. They would, like any other intern, need to accept the company's direction and would be integrated like all employees.

*How important do you believe succession planning is for family businesses?*

All businesses require succession planning and we are no exception. It is vital for the long term future for any company that all positions have young qualified individuals prepared to continue the development of the business division whether they are family members or not.

*Your success was recently recognised at the 2008 NSW & ACT Family Business of the Year Awards, where your business was the winner of the 2nd Generation Award. What has this recognition meant to your business?*

The company is delighted to have been recognised in these awards and is very proud of the achievement. The success of the company is a tribute to all members of the staff at all levels. We are very proud of them and their contribution to our growth and this recognition is good for morale. There has also been recognition within our business community and by our customers of our success in the Family Business Awards which reinforces our standing in the business community.

# Super funds & borrowing

Paul Rafton, Director – Superannuation, BDO Kendalls (QLD)

As the law currently stands Self Managed Superannuation Funds (SMSFs) are permitted to borrow, subject to the following caveats:

- The transaction must be properly documented and must adhere to the Superannuation Industry (Supervision) Act 1993 (the SIS Act); and
- The transaction must not breach any of the Financial Services Reform provisions.

We anticipate the Australian Taxation Office (ATO) will increase its monitoring of SMSFs with a particular focus on SMSFs that enter into borrowing arrangements.

At the recent Superannuation Professional Association of Australia (SPAA) conference, Senator Nick Sherry indicated, he was watching the introduction of loan arrangement products “very, very closely” for any signs of excessive and aggressive promotion.

For that reason we strongly recommend the relaxation of rules allowing SMSFs to borrow, be used in limited circumstances and only when the structure is established correctly and the underlying investment is a proper and prudent investment.

There are a number of issues to which Trustees need to satisfy themselves. These include:

- determining the reason to undertake such an arrangement, including the feasibility of the arrangement (verify the investment is a proper and prudent investment) and cash flow requirements (i.e. current and future cash flow to service the debt);
- ensuring that the borrowing is in line with the law and is not designed to defeat the contribution caps; and
- ensuring that the borrowing arrangement is not in conflict with the Sole Purpose Test (which requires a SMSF be maintained for the sole purpose of providing retirement benefits for members or their dependants in the event of their death).

## Other issues for consideration

Firstly, does the SMSFs Trust Deed provide for borrowings under s67(4A) of the SIS Act?

Secondly has the SMSFs Investment Strategy been upgraded to provide for this borrowing and underlying investment?

The investment strategy must take into consideration the SMSFs overall circumstances, core purpose, diversification, liquidity and ability to service the borrowings. For example, what happens when the Fund commences to pay an income stream?

*For assistance in your super fund borrowing requirements, please contact paul.rafton@bdo.com.au*

*NB: All other conditions of the SIS Act still apply, eg SMSFs cannot acquire a residential property from a member or related party and SMSFs are prohibited from running a business etc.*

## We want to hear from you

Your feedback is important to us. If there are any topics or issues that you would like addressed in Family Business News, please send your request through to [marina.skinner@bdo.com.au](mailto:marina.skinner@bdo.com.au)

## For more information

### Adelaide

Garry Whitelock  
Phone +61 8 8224 5265  
[garry.whitelock@bdo.com.au](mailto:garry.whitelock@bdo.com.au)

### Brisbane

Bruce Hatcher  
Phone +61 7 3237 5986  
[bruce.hatcher@bdo.com.au](mailto:bruce.hatcher@bdo.com.au)

### Cairns

Michael Delaney  
Phone +61 7 4046 0000  
[michael.delaney@bdo.com.au](mailto:michael.delaney@bdo.com.au)

### Darwin

Mal Sciacca  
Phone +61 8 8981 7066  
[mal.sciacca@bdo.com.au](mailto:mal.sciacca@bdo.com.au)

### Hobart

Peter Sander  
Phone +61 3 6234 2499  
[peter.sander@bdo.com.au](mailto:peter.sander@bdo.com.au)

### Melbourne

Rob Scheiber  
Phone +61 3 8320 2318  
[robert.scheiber@bdo.com.au](mailto:robert.scheiber@bdo.com.au)

### Perth

Lyall Bear  
Phone +61 8 9360 4200  
[lyall.bear@bdo.com.au](mailto:lyall.bear@bdo.com.au)

### Sydney

Robert Powell  
Phone +61 2 9286 5850  
[robert.powell@bdo.com.au](mailto:robert.powell@bdo.com.au)

## DISCLAIMER

This publication contains information, opinion and comment of a general nature only. The contents of this publication are not a substitute for specific advice and should not be relied upon as such. Accordingly, whilst every care has been taken in the presentation of the publication, no responsibility is accepted for persons acting on this information.

BDO Kendalls is a national association of separate partnerships and entities.

© 2009 BDO Kendalls. Not to be reproduced without permission.

Liability limited by a scheme approved under Professional Standards Legislation other than for the acts or omissions of financial services licensees.